

## General Terms and Conditions of Sale

(Status as at May 2018)

Hauschild & Co. KG

Waterkamp 1, 59075 Hamm,

hereinafter known as "the Company",

### **1. Scope of validity**

(1) The following terms and conditions shall apply – unless differing terms and conditions have been expressly agreed or recognised in writing – on an exclusive basis for all legal transactions – including future ones as well – between the Company and the "other Party" to the contract, provided that the latter is an entrepreneur within the meaning of Section 14 of the German Civil Code [BGB].

(2) The general terms and conditions of business of the other Party shall not apply even if the Company does not expressly reject them.

### **2. Conclusion of a contract**

(1) All the Company's offers are subject to change without notice and non-binding, provided that they have not been expressly marked as being binding, or include a specific period of time within which an offer must be accepted. Contracts or orders may be accepted by the Company within fourteen days of receipt.

(2) If contracts are entered into subject to confirmation in writing sent by electronic means, the content of the letter of confirmation shall be definitive, unless the other Party raises an objection straight away.

### **3. Delivery**

(1) Periods and dates for delivery promised by the Company shall always apply as just approximations, unless the Company has expressly promised or agreed a fixed delivery period or date. Insofar as dispatch has been agreed, the delivery periods and delivery dates shall apply to the point in time at which the goods are handed over to a haulier, freight forwarder or other third party entrusted with delivery.

(2) The Company shall be entitled to render part-performances as well, if the other Party can reasonably be expected to accept them. If delivery in response to call-off has been agreed, the other Party shall have to call off orders within a reasonable period of time.

(3) If the delivery is made impossible or exceptionally difficult within the meaning Section 275 Para 2 BGB, as a result of force majeure, official measures, closure of the works, strike, extreme weather conditions or similar circumstances – even if these affect the Company's suppliers (sub-suppliers), the Company shall be exempted from its obligation to supply for the duration of the hindrance to delivery and its after effect. This will also entitle the Company to withdraw from the contract if, and provided that, it can no longer be reasonably expected to adhere to the contract. In the event of the Company not being supplied itself, or not being supplied with adequate supplies, by a sub-supplier the Company shall be partially or completely exempted from its obligation to deliver to other Parties. This shall only apply in those cases in which it has taken the necessary precautions to fulfil its performance obligation to supply and has selected its sub-suppliers with care. In this case it shall undertake to assign its claims against the sub-suppliers to the other Party upon request. In this case the other Party shall still be obliged to render its counter-performance in accordance with Section 326 Para 3 BGB. The Company shall inform the other Party of the occurrence of the above events and non-availability straight away and in the event of withdrawal, reimburse the other Party's counter-performance straight away.

(4) If the Company falls into arrears with a delivery of goods or rendering a performance, or if it becomes impossible for it to deliver goods or render a performance, regardless of the reasons for this, liability shall consequently be limited to compensation for damages in accordance with Number 6 of these General Terms and Conditions of Sale.

#### **4. Passing of risk, Dispatch and Customs' regulations**

(1) Risk and liability shall pass over to the other Party when the goods to be delivered are handed over – even if this is from a third location – (whereby it shall be the beginning of the loading procedure that shall count) to the haulier, freight forwarder or other third party appointed to transport the goods, who may be an employee of the Company. Otherwise risk and liability shall pass over when the goods are handed over.

(2) Dispatch – even within the same place of dispatch – shall be at the expense of the other Party, unless agreed otherwise. The Company shall select the method of dispatch, provided that the other Party has not passed over any special instructions. The Company shall take out

transport insurance at the request of the other Party for the amount of cover required at the latter's expense.

(3) The other Party alone shall be responsible for compliance with all customs' and import regulations, including the necessary documentation and payment of all fees. If the delivery is delayed as a result of non-compliance with the respective regulations, the other Party shall be in default with taking delivery of the goods.

## **5. Warranty**

(1) The warranty period is one year from delivery. This period of time shall not apply for compensation claims for damages asserted by the other Party arising from death, personal injury or physical harm or from intentional or grossly negligent breaches of duty by the Company or his assistants, which shall respectively become time-barred in accordance with the statutory regulations.

(2) The other Party must inspect the goods immediately after receipt for material defects, e.g. quantity, material defects and condition, and is obliged to make a note of manifest defects on the receipt. Otherwise Section 377 of the German Commercial Code [HGB] shall apply in accordance with the following provisions. Damage in transit shall not entitle the other Party to refuse to take delivery of the consignment from the Company.

(3) The other Party may only lodge complaints about manifest defects or manifest discrepancies in the condition of the goods or on account of the goods delivered being manifestly different to those ordered straight away, that is, within 24 hours of receipt, or from the defect becoming manifest at the latest.

(4) The other Party shall have to familiarise himself with the instructions for use prior to start-up, and in particular the hazard warnings. Defects and damages resulting from incorrect operation shall not give rise to rights under warranty or other claims.

(5) If the Company is liable under warranty in accordance with these General Terms and Conditions of Sale, the Company shall consequently be obliged and entitled, as it chooses, within a reasonable period of time, initially to effect a cure or supply a replacement. In the event that a cure is unsuccessful, i.e. it is impossible or unreasonable to effect a cure, or if the Company refuses to do so or there is an unreasonable delay on his part to effect a cure or supply a replacement, the other Party may withdraw from the contract or reduce the purchase price by a reasonable amount.

(6) The expenditure necessarily incurred for the purpose of inspection and effecting a cure, in particular transport costs, fares, labour and the cost of materials shall be for the Company's account if there actually is a defect in the goods supplied. Otherwise the Company may demand that the other Party reimburse it for the costs incurred as a result of the unjustified demand that a defect be rectified (in particular inspection and transport costs plus dispatch costs), unless the other Party was not in a position to identify that there was no defect.

(7) If the Company is responsible for the defect, the other Party may consequently only demand compensation for damages in accordance with the following provisions.

(8) The warranty shall lapse if the other Party modifies or allows third parties to modify the item supplied without the Company's consent and as a result of this it becomes impossible or unreasonably difficult to rectify the defect.

(9) No warranty for any quality defects will be furnished if used items are supplied in a specific instance.

## **6. Liability to pay compensation for damages**

(1) No compensation claims for damages asserted by the other Party, regardless of whatever legal reason upon which they may be based, in particular on account of a breach of duties incumbent under contractual obligations and on account of unlawful acts shall be admitted, even if they are based upon a fault committed by the executive bodies, legal representatives or other assistants of the Company.

(2) This shall not apply, insofar as liability is compulsory by law, in particular in cases

- of fraud, intent, and gross negligence,
- of death, personal injury and physical harm,
- in which a product warranty is furnished by the manufacturer, e.g. for the existence of a product feature,
- of a breach of important contractual duties or,
- of liability under the German Product Liability Act.

(3) Compensation claims for damages on account of negligent breach of important contractual obligations are limited to foreseeable damages typical for the contract.

(4) Insofar as liability is excluded or limited, this shall also apply for the personal liability of the Company's salaried staff, employees, representatives and assistants.

(5) In cases of liability for ordinary negligence, the Company's obligation to pay compensation shall be limited to the sum of EUR 2,000,000.00 per damaging event for personal injury and property damage, even if the breach concerns important contractual duties.

(6) The above provisions do not entail an amendment of the burden of proof to the detriment of the other Party.

## **7. Payment**

(1) The prices shall apply for the scope of goods and services listed in the order confirmations. Additional or special services will be invoiced separately. The prices will be in EUROS, ex works, including packing, but excluding dispatch, statutory VAT and if the goods are to be exported from Germany, customs' duty plus other fees and other public duties will not be included either.

(2) Unless agreed otherwise, payment has to be made in full within 30 days from receipt of invoice. If goods and/or services are sold on credit, the credit terms shall be calculated in days from the date of delivery of goods and/or provision of services.

(3) The other Party may only offset with those counter-claims which are not contested by Company or which have been adjudicated.

(4) The other Party may not exercise a right of retention which is not based upon the same legal contract. The assignment of the claims of the other Party against the Company is not allowed.

(5) The Company may offset its claims against the claims of the other Party at any time.

## **8. Setting prices**

Unless agreements are made otherwise, the Company shall be entitled to set the price at its equitable discretion.

## **9. Default**

(1) The purchase price shall become due for payment immediately, if the other Party refuses once and for all to pay the purchase price. The same legal consequences shall materialise if the other Party is in arrears with an amount in excess of one instalment if he has agreed to pay in instalments and if the amount in arrears accounts for at least 10% of the total purchase price. In

the event that the other Party refuses for once and for all to pay the purchase price, the Company may reject the fulfilment of the purchase contract even without setting a subsequent period of time and demand the reimbursement of all costs and expenses incurred plus compensation for a reduction in value.

(2) During default, the Company is entitled to claim from the other Party default interest at 9 percentage points above the base rate in force at that time. The Company shall reserve the right to assert a claim for damages over and above this amount and also the option to demand higher interest for another legal reason. The Company may demand payments in advance, part-payments in advance or hand-over concurrently with payment in cash.

(3) When the other Party is in default with taking delivery, the Company may store the goods in his own stores or at the stores of a third party at the risk and expense of the other Party. Alternatively, the Company may dispose of the goods to account in a suitable manner for the other Party's account, without having to notify the other Party of this in advance.

#### **10. Extended and overall reservation of title**

(1) The following agreed reservation of title shall serve as a security for all the Company's existing, current and future accounts it may have at any time against the other Party from the business relationship existing between the two Parties to the contract.

(2) The goods supplied by the Company to the other Party shall remain the property of the Company until payment has been made in full for all the Company's secured accounts. The goods as well as the goods replacing them in accordance with the provisions below covered by the reservation of title shall henceforth be known as the "goods subject to reservation of title".

(3) The other Party shall keep the goods subject to reservation of title in safekeeping for the Company free of charge.

(4) The other Party shall be entitled to use the goods subject to reservation of title or to sell them in a proper commercial transaction until they are subjected to enforcement (Paragraph 10). Pledges and assignments by bill of sale are not allowed. In cases of sale the Company shall be entitled to inform the end customer of the reservation of title, provided that the Company has a justified interest in doing so.

(5) In the event that the goods subject to reservation of title are resold, the other Party shall assign the account created against the Buyer as a result – if the goods subject to reservation of title are co-owned by the Company a proportion of the account commensurate with the proportion of the co-ownership – to the Company. The same shall apply for other accounts

replacing the goods subject to reservation of title or are created otherwise with regard to the goods subject to reservation of title, such as, for example, insurance claims or claims based upon an unlawful act in the event of loss or destruction. The Company shall authorise the other Party on a revocable basis to collect the accounts assigned to the Company in its own name. The Company may only revoke this collection authorisation if the goods subject to reservation of title are subjected to enforcement.

(6) The other Party shall be obliged to inform the Company immediately of levies of execution or other impairments on the ownership of the goods subject to reservation of title.

(7) The other Party shall have to insure at its own expense the goods belonging to the Company at the latter's request against the normal risks and assign the claims under the insurance policy to the Company. The Company shall also be entitled to pay the insurance premiums for the account of the insured (the other Party).

(8) The Company shall release the goods subject to reservation of title as well as the things covering them or accounts provided that their value exceeds the value of the secured accounts by more than 30%. The selection of the items to be released thereafter shall be the prerogative of the Company.

(9) If the Company withdraws from the contract, in particular if the other Party acts in breach of contract – default in payment in particular – (Enforcement), it shall be entitled to demand the return of the goods subject to reservation of title.

## **11. Place of fulfilment, Place of jurisdiction, Applicable law**

(1) The business premises of the Company's main offices in Hamm (Westphalia) shall be the place of fulfilment for both Parties.

(2) The place of jurisdiction for all legal disputes arising from, or in connection with, contracts between the Company and the other Party shall be Hamm (Westphalia), Germany.

(3) The relationships between the Company and the other Party shall only be governed by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods [CISG] dated 11 April 1980 shall not apply.

(4) Verbal side agreements between the other Party and the Company shall not be legally binding. They must be committed to writing to be legally valid.

(5) Insofar as the contract or these General Terms and Conditions of Sale contain gaps, those legally valid arrangements which the Parties to the contract would have agreed, given the set economic objectives of the contract, and the objective of these General Terms and

Conditions of Sale, had they been aware that there were gaps in the contract, shall apply to fill such gaps.

**Data Protection Statement:**

The other Party acknowledges that the Company shall save data from the contractual relationship in accordance with Section 28 of the German Federal Data Protection Act for the purpose of processing data and shall reserve the right to transfer the data to third parties insofar as this is necessary to fulfil the contract (e.g. insurance policies).